



Issue 2012-4  
November 29, 2012

# employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service  
Tax Exempt and Government  
Entities Division

A Publication of Employee Plans

- [Section 436 amendment deadline extended for defined benefit plans](#)  
Certain defined benefit plans have until the last day of the 2013 plan year to adopt a section 436 interim amendment
- [Governmental plans can elect second Cycle E \(instead of second Cycle C\)](#)  
Sponsors of individually designed governmental plans may submit determination letter applications during the second Cycle E (February 1, 2015 - January 31, 2016)
- [Amending governmental plans participating in group trusts](#)  
Explains which plans must amend to add the exclusive benefit requirements and the amendment deadline
- [Phone forum on plan loans and hardship distributions to Sandy victims](#) (December 11, 2012)  
Discussion of the available options for employees, their families and plan sponsors under Announcement 2012-44

## Section 436 Amendment Deadline Extended for Defined Benefit Plans

[Notice 2012-70](#) extends the deadline for adopting a section 436 interim amendment to the last day of the 2013 plan year for most defined benefit plans. However, an individually designed defined benefit plan sponsor's filing for a determination letter may accelerate this amendment deadline for the plan.

### Extended deadline

A defined benefit plan sponsor may adopt a section 436 interim amendment by the latest of the:

- last day of the first plan year beginning on or after January 1, 2013;
- last day of the plan year for which IRC Section [436](#) is first effective for the plan; or
- due date, including extensions, of the employer's tax return for the tax year (determined by [Rev. Proc. 2007-44, Section 5.06\(2\)](#) for a tax-exempt employer) that contains the first day of the plan year for which IRC Section 436 is first effective for the plan.

### Determination letter filing

In general, an individually designed defined benefit plan sponsor must incorporate a section 436 interim amendment in their restated plan if they file a determination letter application on or after February 1, 2013.

### Section 436 amendment

Defined benefit plans must impose certain benefit restrictions if the plan is underfunded. An IRC Section 436 plan amendment that eliminates or reduces an IRC Section [411\(d\)\(6\)](#) protected benefit does not cause the plan to fail to meet the anti-cutback requirements of IRC Section 411(d)(6) if:

- the plan sponsor adopts a section 436 amendment by the deadline described in [Notice 2012-70](#), and
- the amendment eliminates or reduces protected benefits only to the extent necessary for the plan to meet the IRC Section 436 requirements.

### Sample amendment

Individually designed and pre-approved single-employer defined benefit plan sponsors may adopt the sample amendment in [Notice 2011-96](#).

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## Governmental Plans Can Elect Second Cycle E

[Revenue Procedure 2012-50](#) allows sponsors of individually designed [governmental plans](#) to elect Cycle E (instead of Cycle C) as their second remedial amendment cycle.

### Cycle E election

Sponsors can elect Cycle E as their second remedial amendment cycle by filing a determination letter application for their plan between February 1, 2015 and January 31, 2016, instead of the second Cycle C submission period (February 1, 2013 - January 31, 2014). Sponsors don't need to notify the IRS of their intent to make this election.

Sponsors who elect Cycle E must:

- amend their plans for all applicable items on the second Cycle E Cumulative List, and
- timely adopt any interim amendments required for governmental plans during the second Cycles C and D.

Sponsors electing Cycle E as their second remedial amendment cycle will have their plans':

- subsequent remedial amendment cycles revert to Cycle C (for example, the plan's third remedial amendment cycle will be the third Cycle C), and
- second cycle determination letter expire at the end of the third Cycle C submission period (January 31, 2019).

#### **Prior determination letter**

Determination letters for individually designed governmental plans issued after the initial remedial amendment cycle expire on January 31, 2014 (at the end of the second Cycle C), even if the sponsor [elected the first Cycle E](#) as the plan's initial cycle. However, the IRS will extend the expiration dates on these letters to January 31, 2016 (the end of second Cycle E), if the sponsor elects Cycle E as the plan's second remedial amendment cycle.

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### **Governmental Plans Participating in Group Trusts May Need Amending**

Certain Internal Revenue Code Section [401\(a\)\(24\)](#) governmental plans may need to be amended to add the exclusive benefit requirement by the earlier of:

- the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after January 1, 2012, or
- January 1, 2015 ([Notice 2012-6](#)).

This deadline applies to Section 401(a)(24) governmental plans:

- for which the authority to amend the plan is held by a legislative body that meets in legislative session, and
- whose assets are pooled with other group trust retiree benefit plans in a group trust established under Revenue Ruling 81-100, 1981-1 C.B. 326, by meeting the requirements of [Revenue Ruling 2011-1](#).

#### **Exclusive benefit requirement**

Revenue Ruling 2011-1 requires each group trust retiree benefit plan that adopts the group trust to expressly state in its governing document that no part of the corpus or income of the group trust retiree benefit plan would be used for, or diverted to, purposes other than for the exclusive benefit of the plan participants and their beneficiaries.

#### **When amendment required**

A Section 401(a)(24) governmental plan doesn't need to be amended if it is already subject to the exclusive benefit requirement under a statute or other rule under state law.

The IRS recognizes that governmental plans may not have a single, cohesive plan document. For example, the IRS allows sponsors of governmental plans applying for determination letters to submit:

- portions of a statute that apply to the governmental plan containing general plan provisions, and
- other documents binding on the plan that contain additional plan language (for example, provisions of regulations, ordinances and other state rules or policies applicable to the plan under state law). See FAQs: [governmental plan determination letters](#) for additional information.

The IRS will apply the same rule to determine whether the governing document of a Section 401(a)(24) governmental plan satisfies the exclusive benefit requirement.

## Phone Forum - Retirement plans can make loans, hardship distributions to Sandy victims - December 11, 2012

Announcement 2012-44 and the relief it provides for those affected by Hurricane Sandy will be addressed by Eric Slack, Acting Manager of Employee Plans Technical Guidance. The forum will focus on the announcement and the options available to employees, their families and plan sponsors. Mr. Slack will be answering a number of common questions resulting from the issued announcement. If you have a specific matter that you would like to be addressed, please let us know via email at [ep.phoneforum@irs.gov](mailto:ep.phoneforum@irs.gov) on or before December 7, 2012.

Evaluation Form: [Form 14364](#), Continuing Education Evaluation - Please enter your name, complete items 1-7 and send it to [ep.phoneforum@irs.gov](mailto:ep.phoneforum@irs.gov).

[Registration Link](#) - after registering, you will receive forum access instructions in an email.

**Date:** December 11, 2012

**Time:**

Eastern	Central	Mountain	Pacific
2:00 p.m.	1:00 p.m.	12:00 p.m.	11:00 a.m.

Phone Forums generally take about 60 minutes.